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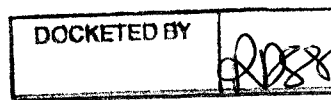
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ARIZONA, COLORADO, MONTANA,  
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DISTRICT OF COLUMBIA

Arizona Corporation Commission  
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OCT 14 2011



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Re: Arizona Public Service Company  
Docket No. E-01345A-10-0474

To Whom It May Concern:

Enclosed for filing in the above-referenced proceeding are the original and thirteen (13) copies of the Arizona Competitive Power Alliance's Reply Post-Hearing Brief.

Thank you for your assistance. Please advise me if you have any questions.

Sincerely,

Angela R. Trujillo  
Assistant to  
Lawrence V. Robertson, Jr.

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BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

**GARY PIERCE, Chairman**  
**BOB STUMP**  
**SANDRA D. KENNEDY**  
**PAUL NEWMAN**  
**BRENDA BURNS**

IN THE MATTER OF THE APPLICATION OF )	
ARIZONA PUBLIC SERVICE COMPANY FOR )	DOCKET NO. E-01345A-10-0474
AUTHORIZATION FOR THE PURCHASE OF )	
GENERATING ASSETS FROM SOUTHERN )	<b>ARIZONA COMPETITIVE</b>
CALIFORNIA EDISON AND FOR AN )	<b>POWER ALLIANCE'S REPLY</b>
ACCOUNTING ORDER. )	<b>POST-HEARING BRIEF</b>

Pursuant to Chief Administrative Law Judge ("CALJ") Farmer's September 1, 2011 oral directive from the bench,<sup>1</sup> the Arizona Competitive Power Alliance ("Alliance") submits its Reply Post-Hearing Brief in the above-captioned and above-docketed matter.

**I.**

**INTRODUCTION**

In its Initial Post-Hearing Brief, the Alliance discussed at length why under the applicable provisions of (i) the "self-build" moratorium, as approved by the Commission with modification in Decision No. 67744, (ii) the Recommended Best Practices for Procurement, as adopted by the Commission in Decision No. 70032, and (iii) the Resource Planning and Procurement Regulations, as adopted by the Commission in Decision No. 71722 and set forth at R14-2-701 et seq., Arizona Public Service Company ("APS") should be directed to issue a request for proposal ("RFP") for alternatives to the ultimate generation capacity it seeks to realize at the Four Corners Generating Station through consummation of its proposed transaction with Southern California Edison Company ("SCE"). In addition, the Alliance also therein discussed why it believes that the current evidentiary record in the instant proceeding does not allow the Commission to make a

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<sup>1</sup> Tr. 1082, l. 20-22.

1 fully informed decision as to whether or not the proposed transaction with SCE in fact represents  
2 the "best deal" capacity acquisition available to APS under present market conditions.

3 In this Reply Post-Hearing Brief, the Alliance responds to the Initial Post-Hearing Briefs  
4 of those parties who urge the Commission to authorize APS to proceed with consummation of  
5 the proposed transaction with SCE. The Alliance's response need not be lengthy in this instance,  
6 because in its Initial Post-Hearing Brief the Alliance correctly anticipated and fully addressed the  
7 arguments that parties favoring the proposed transaction would make in relation to the two (2)  
8 topics identified in the preceding paragraph. In that regard, the Alliance incorporates herein by  
9 this reference, as a part of its Reply Post-Hearing Brief, the contents of its Initial Post-Hearing  
10 Brief.

## 11 II.

### 12 DISCUSSION

#### 13 A. APS IS NOT ENTITLED TO AN EXEMPTION FROM OR WAIVER OF THE 14 "SELF-BUILD" MORATORIUM OR THE RFP REQUIREMENT

##### 15 1. *The "Self-build" Moratorium*

16 For the reasons discussed at length in Section II of the Alliance's Initial Post-Hearing  
17 Brief, APS is not entitled to an exemption from or waiver of the "self-build" moratorium as of  
18 this point in time. Similarly, it has not credibly demonstrated the existence of those  
19 circumstances which would warrant an exemption from that issuance of an RFP required by both  
20 the Commission's Recommended Best Practices for Procurement and the Commission's  
21 Resource Planning and Procurement Regulations.

22 In that regard, the reliance of APS (and other parties supporting its request) upon APS'  
23 unsuccessful offers in early 2010 to purchase capacity from the competitive wholesale market is  
24 misplaced. All we know from the record in the instant proceeding is that APS' offers were not  
25 accepted. However, we have no insight as to why those offers were not accepted. Nor, do we  
26 have any evidence to suggest that the circumstances surrounding those merchant generator-  
27 issued RFPs were in any way similar to the amount of capacity APS ultimately would realize as  
28 a consequence of consummation of the proposed transaction with SCE. Hence, there is no

1 factual basis for a comparability assumption, which in effect is what APS seeks to do through  
2 reliance upon its experience in early 2010. Finally, the background circumstances surrounding  
3 both (i) the signatory parties negotiation and (ii) the Commission's approval of the "self-build"  
4 moratorium require more from APS and its interaction with the competitive wholesale market  
5 than the "drive by" or "windshield appraisal" approach relied upon by APS and its supporters in  
6 this instance.

7 Simply and starkly stated, APS made absolutely no effort to seek proposals from the  
8 wholesale competitive market relevant to either (i) SCE's share of Four Corners Units 4 and 5 or  
9 (ii) the ultimate capacity arrangement APS seeks to attain at Four Corners as a consequence of  
10 the proposed transaction with SCE and the related retirement of Units 1, 2 and 3. For that reason  
11 alone,<sup>2</sup> APS is not entitled as of this juncture to an exemption from or waiver of the "self-build"  
12 moratorium.<sup>3</sup>

## 13 2. The RFP Requirement

14 It is readily apparent from both the hearing testimony and the Initial Post-Hearing  
15 Brief(s) of APS, and those other parties urging authorization for APS to proceed with the  
16 proposed transaction with SCE, that heavy reliance is being placed upon that transaction  
17 satisfying the "genuine, unanticipated opportunity" exception to that use of an RFP otherwise  
18 required by both the Commission's Recommended Best Practices for Procurement and the  
19 Commission's Resource Planning and Procurement Regulations. However, once again, such  
20 reliance is misplaced.

21 More specifically, any discerning review and analysis of the California Public Utilities  
22 Commission's ("CPUC") September 2, 2008 Proposed Decision and the CPUC's October 23,  
23 2008 Ruling, in connection with SCE's petition for exemption from the CPUC's regulations

24 <sup>2</sup> As discussed in Section II of the Alliance's Initial Post-Hearing Brief, APS has also failed to satisfy other  
25 requirements of the "self-build" moratorium.

26 <sup>3</sup> In the event that APS should either (i) voluntarily issue an RFP or (ii) at the direction of the Commission issue an  
27 RFP specific to the capacity circumstances here in question, and APS either received no responses from the  
28 competitive wholesale market or none which were competitive with or superior to its proposed arrangement with  
APS, then APS would be in a position to demonstrate compliance with Paragraphs 75(b), 75(c) and 75(d) of the  
"self-build" moratorium, (ii) Section 2(E) of the Commission's Recommended Best Practices for Procurement and  
(iii) R14-2-705(B)(5) of the Commission's Resource Planning and Procurement Regulations. However, that is not  
the situation as of this juncture in the instant proceeding.

1 implementing SB1368, would readily disclose that SCE's ability to continue its ownership  
2 interest in Units 4 and 5 was in serious jeopardy, if not out of the question.<sup>4</sup> Further, APS'  
3 witnesses testified that APS had been carefully monitoring this situation in California since the  
4 enactment of SB1368 in 2006. Thus, to contend there was no reason prior to the CPUC's final  
5 decision on October 14, 2010 to conclude that SCE might need to terminate or dispose of its  
6 interest in Units 4 and 5 simply strains credulity beyond the breaking point.

7 Something more than the circumstances present in this case is required to satisfy the  
8 "genuinely unanticipated opportunity" criterion here at issue. Given the background history of  
9 how the RFP preference evolved into its current expression in both the Recommended Best  
10 Practices for Procurement and the Resource Planning and Procurement Regulations, the  
11 Commission should not be lax in requiring the demonstration of an actual "genuine,  
12 unanticipated opportunity." Accordingly, an exemption to the RFP requirement should not be  
13 granted or acknowledged in this instance.

14 **B. THE EVIDENTIARY RECORD DOES NOT CONTAIN SUFFICIENT**  
15 **INFORMATION AT THIS JUNCTURE TO ALLOW THE COMMISSION TO**  
16 **MAKE A FULLY INFORMED DECISION AS TO WHETHER TO AUTHORIZE**  
17 **APS TO PROCEED WITH THE PROPOSED TRANSACTION**

18 This circumstance was discussed at length in Section III of the Alliance's Initial Post-  
19 Hearing Brief; and, therein the Alliance anticipated and rebutted in advance arguments made by  
20 APS and the other parties supporting the proposed transaction in their respective initial briefs.  
21 Accordingly, the Alliance's observations and arguments need not be restated in full in this Reply  
22 Post-Hearing Brief.

23 However, there is one inarguable fact which warrants reiteration. That is the fact that to  
24 date APS has not solicited from the competitive wholesale market proposals for alternative  
25 capacity arrangements to that ultimate capacity arrangement it seeks to realize as a result of the  
26 proposed transaction with SCE. Until an RFP tailored to this circumstance has been issued by  
27

28 <sup>4</sup> The aforesaid Proposed Decision and the Ruling are discussed at length in Section II of the Alliance's Initial Post-  
Hearing Brief, as are SB 1368 and the CPUC's regulations implementing SB1368.

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1 APS, and until responses thereto or a lack thereof have been received by APS, no one is in a  
2 position to knowingly opine as to what the wholesale competitive market might or might not be  
3 willing to offer in today's market conditions.

4 In that regard, as well-intentioned as the opinions of witnesses for APS, RUCO, Western  
5 Resource Advocates, Environmental Defense Fund and the Commission's Staff might be on  
6 what the competitive wholesale market would be willing to offer in the form of alternative  
7 proposals, those opinions are based upon either (i) conjecture as to what the competitive  
8 wholesale market might be willing to offer or (ii) APS' early 2010 "drive by" or "windshield  
9 appraisal" assessment of that market under different circumstances than those here present.  
10 Either way, these opinions are not predicated on actual market responses specific to the situation  
11 now before the Commission.

12 In addition, the conduct of such an RFP need not take 18 months, as some parties have  
13 endeavored to suggest, in order to determine whether or not one or more competitive or superior  
14 alternative proposals are available from the competitive wholesale market. As Alliance witness  
15 Patterson testified, those market participants should be in a position to readily determine whether  
16 or not they can match or beat the "deal" represented by the proposed transactions with SCE. If  
17 they cannot, presumably they would so inform APS, and promptly. If they can, then the public  
18 interest would suggest that both APS and the Commission should seriously consider such  
19 alternative(s) before a decision is rendered on APS' request. In that regard, rather than presume  
20 that participants in the competitive wholesale market would decline to positively respond to such  
21 an RFP, which some parties appear to have done, the Alliance believes that those market  
22 participants should be given the opportunity to make that decision for themselves.

23 As of this juncture, the Commission is being asked to make a very important decision  
24 based upon conjecture and incomplete information. Suffice it to say, those circumstances do not  
25 allow it to make that fully informed decision which is to be desired. As testified to by Alliance  
26 witness Patterson, and as discussed in Section III of the Alliance's Initial Post-Hearing Brief,  
27 there is still adequate time for APS to issue an RFP (either on its own initiative or at the direction  
28 of the Commission) and evaluate and report upon the results well in advance of either the

October 31, 2012 closing date or the December 31, 2012 right of termination date under its contractual arrangement with SCE.<sup>5</sup> Moreover, if APS receives one (1) or more credible competitive or superior responses to such an RFP, then prudence would appear to suggest that it should not hastily consummate the currently proposed transaction with SCE.

### III.

#### CONCLUSION

As discussed in detail in Section II above, the Alliance believes that APS has not satisfactorily discharged that burden of proof to be required of it as the moving party in connection with the requirements of (i) the "self-build" moratorium, as approved in Decision No. 67744, (ii) Section 2(E) of the Recommended Best Practices for Procurement and (iii) R14-2-705 (B)(5) of the Resource Planning and Procurement Regulations. In addition, the Alliance believes that the evidentiary record in the instant proceeding currently does not contain sufficient information to allow the Commission to reach a well-informed decision as to whether or not APS should be authorized to consummate the proposed transaction with SCE. In that regard, the Alliance also believes that this informational deficit could be remedied by the Commission issuing an appropriate<sup>6</sup> order or decision directing APS to promptly and properly conduct an RFP for offers from the competitive wholesale market for base load generating capacity approximately equivalent to that APS is proposing to ultimately realize through the proposed transaction with SCE. The response(s) to such an RFP, or lack thereof, would provide the Commission with that information necessary to reach a well-informed and definitive decision on APS' Application.

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<sup>5</sup> In that regard, APS witness Guldner acknowledged during cross-examination that APS' contractual arrangement with SCE does not automatically terminate if the proposed transaction does not close by either October 2012 or December 2012. Tr. 873, l. 5 – Tr. 874, l. 16 (Guldner). Also, see Exhibit APS-16, Item Nos. 19 and 20 in this regard. Further, while either APS or SCE could terminate the agreement any time after January 1, 2013, Mr. Guldner agreed that

"... the then surrounding circumstances would be very pertinent to whether or not either party was inclined to exercise their right to terminate the contract." Tr. 874, l. 17 – Tr. 875, l. 19.

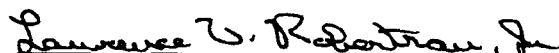
<sup>6</sup> As Alliance witness Patterson observed, the range of orders and decisions available to the Commission (and Hearing Division) in this instance includes the issuance of a preliminary order directing APS to conduct an RFP prior to the issuance of either a Recommended Opinion and Order by CALJ Farmer or a final decision by the Commission. Tr. 997, l. 14 – Tr. 998, l. 11 (Patterson).

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Alternatively, in the event that the Commission should determine to issue a decision authorizing APS to proceed with consummation of the transaction with SCE, the Commission may wish to consider incorporating as conditions some of the considerations discussed in Section IV of the Alliance's Initial Post-Hearing Brief.

Dated this 13<sup>th</sup> day of October 2011.

Respectfully submitted,

  
Lawrence V. Robertson, Jr., Of Counsel  
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Alliance

The original and thirteen (13) copies of the foregoing will be filed on the 14<sup>th</sup> day of October 2011 with:

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A copy of the same will be served by e-mail or first class mail that same date on:

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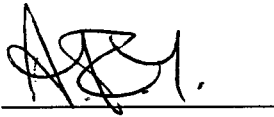
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